Supreme Court, U.S.
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JOINT APPENDIX.

IN THE

Supreme Court of the United States

October Term, 1979
No. 79-602

DONALD W. AGINS and BONNIE G. AGINS,

Appellants,

vs.

CITY OF TIBURON,

Appellee.

On Appeal From the Supreme Court of California.

Filed October 11, 1979.

Probable Jurisdiction Noted January 7, 1980.

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vs.

CITY OF TIBURON,

Appellee.

On Appeal From the Supreme Court of California.

JOINT APPENDIX.

A. Relevant Docket Entries in the Proceeding Below.

Date	Identification
June 16, 1975	Complaint in Inverse Condemnation and for Declaratory Relief filed in the Superior Court of California, County of Marin. (The Complaint is contained in this Joint Appendix beginning at page 4).
October 31, 1975	Demurrer to Complaint. (The Demurrer is contained in this Joint Appendix beginning at page 26).
April 23, 1976	Order Sustaining Demurrer to First Cause of Action Without Leave to Amend and to Second Cause of Action With Leave to Amend. (This Order is contained in this Joint Appendix beginning at page 27).
May 5, 1976	Judgment of Dismissal. (This is contained in Appendix B to the Jurisdictional Statement).
June 2, 1976	Notice of Appeal. (This is contained in this Joint Appendix beginning at page 28).
March 14, 1979 (Modified May 17, 1979)	Opinion and Decision of the Supreme Court of California. (This is printed in Appendix A to the Jurisdictional Statement.)
July 6, 1979	Notice of Appeal to the Supreme Court of the United States filed with the Supreme Court of California. (This is printed in Appendix C to the Jurisdictional Statement.)

B. Relevant Pleadings, Charges, Findings and Opinions.

1. The Complaint filed June 16, 1975. (Printed in this Joint Appendix commencing at page 4).
2. Demurrer to Complaint filed October 31, 1975. (Printed in this Joint Appendix commencing at page 26).
3. Order Sustaining Demurrer filed April 23, 1976. Printed in this Joint Appendix commencing at page 27).
4. Notice of Appeal filed June 2, 1976. (Printed in this Joint Appendix commencing at page 28).
5. Opinion and Decision of the Supreme Court of California as modified by it on May 17, 1979. (Printed as Appendix A to the Jurisdictional Statement). This is the decision in question in this appeal.

Complaint in Inverse Condemnation and for Declaratory Relief.

Superior Court of California, County of Marin.

Donald W. Agins and Bonnie G. Agins, Plaintiffs, v. City of Tiburon, a municipal corporation, and Does One through Fifty, Defendants. No. 75873.

Filed: June 16, 1975.

Plaintiffs complain of Defendants, and each of them, and for cause of action allege:

FIRST CAUSE OF ACTION—
INVERSE CONDEMNATION

I

Defendant, CITY OF TIBURON, is a municipal corporation in the County of Marin, State of California, organized and existing under the laws of the State of California. It is a peninsula, surrounded by navigable water on three sides, containing an area of 1676 acres and having an approximate population of Six Thousand, Two Hundred, and Nine persons pursuant to a calculation based upon the 1970 census. Luxuriant foliage, aquatic facilities, favorable climate, proximity to San Francisco, and Ridgelands affording a sweeping view of the San Francisco Bay Area are among the many factors constituting this entire area the most desirable place to live in the State of California and resulting in the highest land value per acre for suburban areas in the State of California.

II

Defendants DOES ONE through FIFTY are individuals acting as agents, principals, or individuals who at certain times relevant hereto, by and with the knowledge and consent of Defendant Tiburon, have acted in

a negligent, fraudulent, oppressive, coercive, or otherwise illegal manner with the deliberate and calculated design of depriving Plaintiffs and others similarly situated of real property and the profits derived therefrom without due process of law and just compensation and to damage Plaintiffs and others similarly situated in their property rights the natural and proximate result of which courses of conduct has been to cause Plaintiffs and others similarly situated monetary damages as hereinafter alleged. The identities of said Defendants are not known and cannot be ascertained at the date hereof and for that reason said Defendants are designated herein as fictitious persons. In this regard, Plaintiffs pray for leave to allege said Defendants by their true names by appropriate amendment hereto at such time or times as said identities are ascertained and established.

III

At all times pertinent hereto, Plaintiffs were and now are the owners of five acres of land located in the County of Marin, State of California, and situated within the confines of Defendant, CITY OF TIBURON. The exact description of the aforesaid real property is set forth in Exhibit "A" attached hereto, incorporated herein, and by this reference made a part hereof. Said land was acquired by Plaintiffs for the purpose of effecting residential development thereon, is ideal for said function which constitutes its highest and best use; and Plaintiffs have been at all times ready, able, and willing to accomplish said development. All of said lands owned by Plaintiffs are ridgelands as hereinafter described, possess magnificent views of San Francisco Bay and the scenic surrounding areas, have the highest market values of all lands within the city limits of Defendant, CITY OF TIBURON, and by legislative

definition combined with topographical and geographical characteristics are indispensable to and an essential part of the open-space program which Defendant, CITY OF TIBURON, attempted to convert into legislation as hereinafter described.

IV

On or about June 28, 1973, Defendant, CITY OF TIBURON, enacted Ordinance 124. N.S. which forever prevented the development for residential use or otherwise of the entire area of said lands which have been characterized legislatively and otherwise as an indispensable component of the open-space program legislation adopted by said Defendant. The terms and provisions of said ordinance are by this reference incorporated herein and made a part hereof.

V

On or about January 15, 1972, Defendant, CITY OF TIBURON, directed Dean Witter & Company, Incorporated, to prepare a written plan for the City of Tiburon for open-space acquisition financing. Pursuant thereto, said plan was prepared, promulgated, delivered, accepted, and published on or about July 3, 1972. Said plan, which was approved by Defendant, CITY OF TIBURON, was filed with the official records of said municipality and the terms and provisions thereof are by this reference incorporated herein and made a part hereof. The aforesaid Ordinance 124 N.S. incorporated and adopted said plan in its entirety. Said plan described and identified the real property of Plaintiffs as aforesaid, rendered the acquisition thereof for cash obligatory, and directed a bond issue upon the part of Defendant, CITY OF TIBURON, for the sum of $1,250,000.00; a part of which was required for the purchase of Plaintiffs' property as aforesaid.

VI

Subsequent to the aforesaid date of rendition and acceptance of said Financing Plan, Defendant, CITY OF TIBURON, in accordance with all of the terms and provisions thereof, sold the bonds, received the aforesaid consideration in cash, used a part thereof to purchase a parcel of Ridgelands adjoining Plaintiffs' lands but has refused to expend the allocable part thereof calculated by said Dean Witter & Company, Incorporated, and Defendant, CITY OF TIBURON, notwithstanding the demand of Plaintiffs therefor as hereinafter alleged.

VII

On or about January 15, 1972, Defendant, CITY OF TIBURON, directed the City Planning firm of Williams & Mocine to prepare and deliver to said Defendant the Tiburon Open-Space Plan. Pursuant thereto and on or about October 1, 1972, said Plan was delivered to said Defendant, promulgated, advertised, accepted, and adopted. The aforesaid Plan unequivocally identified Plaintiffs' property by parcel, map, description, and name as indispensable to and necessary for the open-space program in question and dictated that the aforesaid property be forthwith purchased from Plaintiffs by Defendant, CITY OF TIBURON, for cash in accordance with the Financing Plan of Dean Witter as aforesaid and the basic purpose of said Plan of Williams & Mocine in order to conform to the stated and legal limits of the proposed Ordinance.

VIII

The aforesaid Ordinance of Defendant, CITY OF TIBURON, designated as 124 N.S. and enacted on June 28, 1973, incorporated by reference all of the terms and provisions of both the Planning and Financing Documents as aforesaid, was based thereon and limited in every respect to the terms thereof and completely restricted to the mandates therein expressed.

IX

The aforesaid Ordinance of Defendant, CITY OF TIBURON, 124 N.S., has completely destroyed the value of Plaintiffs' property for any purpose or use whatsoever; and the natural and proximate result of said Ordinance has been to prevent any sale, use, transfer, or development thereof or any part thereof. Said Ordinance has resulted in the taking of Plaintiffs' property by Defendant, CITY OF TIBURON, without due process of law and without any compensation therefor in violation of the Federal and State constitutional rights of Plaintiffs.

X

Plaintiffs, as the direct and proximate result of the conduct and activities of Defendants as aforesaid, including, but not limited to, the enactment of said Ordinance 124 N.S., have been damaged in the sum of Two Million ($2,000,000) Dollars consisting of the estimated fair market value of the lands taken as aforesaid and the deprivation and loss of use thereof to the date of the commencement of this proceeding.

XI

Plaintiffs have not been paid any sums whatsoever nor have they or any of them received any sums as and for damages for the activities described herein.

XII

On October 15, 1972, Plaintiffs duly filed a claim for said damages in the amount of Two Million ($2,000,000) Dollars with Defendant, CITY OF TIBURON, in accordance with law; and a true and

correct copy of said claim is attached hereto, marked Exhibit "B" and by this reference incorporated herein and made a part hereof.

XIII

On November 12, 1973, said claim was rejected by Defendant, CITY OF TIBURON, and a true and correct copy of notice of rejection of said claim is attached hereto marked Exhibit "C" and by this reference incorporated herein and made a part hereof.

XIV

On or about October 25, 1973, Defendant, CITY OF TIBURON, duly passed a resolution directing the forthwith acquisition by condemnation procedures of approximately 25 acres of land adjoining the land of Plaintiffs herein identical in topographical characteristics and designated as open-space area acquired by said Defendant Tiburon for its open-space program; and said property was then and there publicly earmarked for purchase by Defendant Tiburon and the funds to be used therefor were to be taken from the proceeds of the aforesaid bond issue.

XV

Subsequent thereto, without any notice or cause whatsoever, Defendant, CITY OF TIBURON, rescinded its resolution to acquire the aforesaid 25 acres by condemnation procedure as aforesaid.

XVI

On October 26, 1973, Defendant, CITY OF TIBURON, duly passed a resolution directing the forthwith acquisition by condemnation procedure of the real property of Plaintiffs described herein.

XVII

On December 4, 1973, Defendant Tiburon filed a complaint in Eminent Domain against Plaintiffs herein wherein it sought to acquire the real property of Plaintiffs described herein; and, on said day, summons was issued and thereafter duly served.

XVIII

The Answer and Cross-Complaint of Plaintiffs herein and Defendants in the aforesaid action—DONALD and BONNIE AGINS—was filed on January 7, 1974, and thereafter said Eminent Domain proceeding, being NO. 69070, was placed at issue.

XIX

On October 3, 1974, Defendant, CITY OF TIBURON, filed and served a Notice of Motion to advance the trial date and incident thereto obtained an ex parte order shortening time for the hearing thereof to five days.

XX

On October 15, 1974, the above-entitled court granted the motion of Defendant Tiburon to advance the trial date and at that time set the settlement conference date for November 4, 1974, and the date of trial by jury for November 18, 1974.

XXI

On October 31, 1974, Plaintiffs herein filed and served a Notice of Appeal from a portion of the order of court rendered in the aforesaid Eminent Domain proceeding on September 3, 1974.

XXII

On November 1, 1974, being one day after the commencement of the aforesaid appeal, Defendant

Tiburon filed its Notice of Abandonment of the aforesaid Eminent Domain proceeding.

XXIII

On November 18, 1974, the above-entitled court rendered its order taking the aforesaid Eminent Domain proceeding off the trial calendar.

XXIV

On February 5, 1975, Defendant Tiburon filed and served a notice of its motion for an order of dismissal of the aforesaid Eminent Domain proceeding.

XXV

On May 20, 1975, the above-entitled court rendered its Judgment of Dismissal of the aforesaid Eminent Domain proceeding.

XXVI

A total period of time comprising one year, six months, and twenty-five days was thereby intentionally devoted by Defendant Tiburon to the total destruction of the use and marketability of the real property of Plaintiffs herein and the public promulgation of its notice to and efforts for the acquisition of not only Plaintiffs' property herein but the aforesaid parcels of real property adjoining the property owned by Plaintiffs as aforesaid.

XXVII

At all times pertinent hereto and for a considerable period of time prior to the events herein alleged, Defendant Tiburon caused to be published and permitted the publication thereof of all proceedings concerning the acquisition of the real property in question, the purpose thereof and the nature of the measures instituted by said Defendant for the accomplishment of its avowed purposes.

XXVIII

As a direct and proximate result of the conduct of Defendants as aforesaid, Plaintiffs have been deprived of property without due process of law or the payment of any compensation therefor to their damage in the sum of Two Million ($2,000,000.00)

XXIX

As a direct and proximate result of the conduct of Defendant, CITY OF TIBURON, Plaintiffs have suffered damages in the amount of Two Million ($2,000,000.00) Dollars.

SECOND CAUSE OF ACTION—
DECLARATORY RELIEF

I

Plaintiffs incorporate by reference herein all of the allocations of the aforesaid First Cause of Action for Inverse Condemnation.

II

As the direct and proximate result of the enactment of Ordinance 124 N.S. by Defendant, CITY OF TIBURON, all of the facts and circumstances hereinabove alleged and the relationship between Plaintiffs and Defendant, CITY OF TIBURON, all of which factors seriously affect the value and use of the real property owned by Plaintiffs as aforesaid an actual controversy exists between Plaintiffs and Defendant, CITY OF TIBURON, concerning past, present, and future legal rights and duties of the respective parties.

More particularly, said controversy raises the following opposing contentions:

(a) Plaintiffs contend:

(1) The Ordinance in question considered separately or in conjunction with the Financing

and Planning Reports and the subsequent acts of Defendant, CITY OF TIBURON, in condemning and purchasing the aforesaid parcels of land adjoining the lands of Plaintiffs is unconstitutional, illegal, and void in that it has unreasonably restricted and does unreasonably restrict Plaintiffs' use and enjoyment of their property.

(2) That said Ordinance is unconstitutional, illegal and void on its face, in that it unreasonably restricts the use and enjoyment of private property and is not reasonably related to its stated legislative purpose of preserving and conserving open space because it purportedly allows development of land for dwellings and thus is an abuse of legislative discretion.

(3) That said Ordinance is null and void because it is not a valid local open-space plan for the City of Tiburon.

(4) That said Ordinance is unconstitutional, illegal and void in that it has no reasonable relation to public health, safety, morals, or general welfare.

(5) That the Ordinance is unconstitutional, illegal, and void as to Plaintiffs in that it deprives them of property without just compensation.

(6) That the Ordinance is an arbitrary, unreasonable, and unnecessary means of preserving open space and that such regulations are a taking of property for public use and benefit and are valid only on the condition that

Defendant Tiburon compensate Plaintiffs for property taken.

(7) That the Ordinance in question is arbitrary, capricious, and unreasonable and therefore constitutes a taking of their property without payment of just compensation in violation of the Fifth and Fourteenth Amendments to the United States Constitution and the California Constitutional provisions protecting the owners of property against such conduct.

(8) The publication of the Financing and Planning Reports and all other publicized legislative activities relating to the proposed open-space plan which preceded the actual enactment of Ordinance 124 N.S. constituted an actual taking of property without due process of law and without the payment of compensation therefor in that said activities and conduct upon the part of Defendant Tiburon were intended to and did in fact prevent development of the land in question, thus reducing its market value in the event of condemnation.

(9) That the sale of the bonds as aforesaid pursuant to the indicated advertisements, solicitations, and legislative enactments necessitated the purchase of Plaintiffs' property described herein with the proceeds thereof within a reasonable period of time from the date of receipt of the proceeds of sale.

(10) That the aforesaid bond issue, all reports, and publications in regard thereto and the receipt of said purchase prices constitutes a

taking of Plaintiffs' property as of the date of the first publication of said activities.

(b) Defendant, CITY OF TIBURON, contends:

(1) That the aforesaid Ordinance and all of the related activities are valid exercises of the police power and compensation is not required.

(2) That the Ordinance and related activities are consistent with existing Open-Space Legislation enacted by the State of California.

(3) That notwithstanding the taking of Plaintiffs' property as aforesaid and the requirement of compensation therefor, the time of payment is a matter solely within the discretion of said Defendant and in the interim the funds so hypothecated for the purchase of Plaintiffs' property can be invested by said Defendant for its sole benefit at an interest rate that is more than double the interest that must be paid to the bondholders.

WHEREFORE, Plaintiffs pray for judgment as follows:

1. Judicial determination that the real property described herein or a substantial part thereof was taken by Defendant, CITY OF TIBURON, without due process of law or the payment of just compensation therefor and the further determination of the exact date of said taking.
2. The payment to Plaintiffs by Defendant, CITY OF TIBURON, of the sum of Two Million ($2,000,000.00) Dollars representing the calculation dated December 31, 1973,

of the fair market value of said real property as of the date of the estimated time of taking together with interest thereon as appropriate.

3. The payment to Plaintiffs by Defendants of the sum of Four Hundred Thousand ($400,-000.00) Dollars per year for loss of use or interference with the said real property from the date of the determined taking until the date of payment of damages in accordance with any judgment rendered herein.
4. The declaration of the rights and duties of the parties hereto in accordance with the allegations set forth in the Cause of Action for Declaratory Relief.
5. That the court declare Ordinance 124 N.S. illegal, unconstitutional, and void.
6. That the court declare Ordinance 124 N.S. illegal, unconstitutional, and void as applied to Plaintiffs' property described herein.
7. Costs of suit incurred herein.
8. Reasonable attorney, appraisal, engineering, and other related fees.
9. Such other and further relief as to the court may appear proper.

DATED: June 4, 1975

/s/ Reginald G. Hearn
REGINALD G. HEARN,
Attorney for Plaintiffs

VERIFICATION

I, REGINALD G. HEARN, state as follows:

I am an attorney at law duly admitted to practice law in the State of California, and I am counsel of record for the Plaintiffs herein.

I make this statement on behalf of the Plaintiffs because said parties are absent from the City and County of San Francisco wherein my office is located.

I have read the within COMPLAINT IN INVERSE CONDEMNATION AND FOR DECLARATORY RELIEF, and I am informed and believe the matters therein stated are true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on June 4, 1975, at San Francisco, California.

/s/ Reginald G. Hearn
REGINALD G. HEARN
Attorney for Plaintiffs

Exhibit "A".

DESCRIPTION:

That certain real property situated in the County of Marin, City of Tiburon, State of California, described as follows:

PARCEL ONE:

BEGINNING at the Northeast corner of that certain parcel of land conveyed from C. O. Sollom, administrator, to Warren L. Bostick, et al, by deed recorded January 24, 1949 in Book 607 of Official Records, at page 152, Marin County Records; and running thence along the Northeasterly line of said property, North 45° 24′ West (old ranch North 45° 51′ West) 367.25 feet; thence leaving said line and running South 44° 36′ West 518.213 feet; thence South 55° 59′ East 17.238 feet; thence on a curve to the right whose center bears South 34° 01′ West and whose radius is 625.0 feet, distant 115.446 feet; thence South 45° 24′ East 343.560 feet to the Southeasterly line of said Bostick property; running thence along said line North 34° 42′ East (old ranch North 34° 15′ East) 512.110 feet to the point of beginning.

PARCEL TWO:

AN EASEMENT for roadway and utility purposes over a 60.0 foot strip of land, the center line of which is described as follows:

BEGINNING at a point on the Southeasterly line of a County road, distant South 73° 07′ West 256.84 feet; thence on a curve to the left whose center bears South 16° 53′ East and whose radius is 970.0 feet, distant 178.970 feet from the most Northerly corner of that certain tract of land conveyed from C. O. Sollom, administrator, to Warren L. Bostick, et al,

by deed recorded January 24, 1949 in book 607 of Official Records at page 152, Marin County Records; and running thence South 49° 18′ 40″ East 230.842 feet; thence on a curve to the right whose center bears South 40° 41′ 20″ West and whose radius is 150.0 feet, distant 134.943 feet; thence South 2° 14′ West 103.987 feet; thence on a curve to the right whose center bears North 87° 46′ West and whose radius is 100.0 feet, distant 79.180 feet; thence South 47° 36′ West 52.287 feet; thence on a curve to the left whose center bears South 42° 24′ East and whose radius is 70.0 feet, distant 121.369 feet; thence South 51° 44′ 30″ East 133.779 feet; thence on a curve to the right whose center bears South 38° 15′ 30″ West and whose radius is 200.0 feet, distant 77.987 feet; thence South 29° 24′ East 49.612 feet; thence on a curve to the left whose center bears North 60° 36′ East, radius 200.0 feet, distant 56.781 feet; thence South 45° 40′ East 86.308 feet; thence on a curve to the right whose center bears South 44° 20′ West and whose radius is 100.0 feet, distant 59.608 feet; thence South 11° 30′ 50″ East 154.03 feet; thence on a curve to the left whose center bears North 78° 29′ 10″ East and whose radius is 150.0 feet, distant 199.324 feet; thence South 87° 39′ East 233.566 feet; thence on a curve to the right whose center bears South 02° 21′ West and whose radius is 300 feet, distant 49.829 feet; thence South 78° 08′ East 25.932 feet to a station designated Station A; thence South 78° 08′ East 44.278 feet; thence on a curve to the

right whose center bears South 11° 52′ West and whose radius is 73.582 feet, distant 83.818 feet, to a point in the center line of a 50.0 foot easement; thence running along said line South 12° 52′ East 103.845 feet; thence on a curve to the right whose center bears South 77° 08′ West and whose radius is 350.0 feet, distant 94.379 feet; thence South 02° 35′ West 85.627 feet; thence on a curve to the left whose center bears South 87° 25′ East and whose radius is 190.0 feet, distant 127.394 feet; thence South 35° 50′ East 172.404 feet; thence on a curve to the right whose center bears South 54° 10′ West and whose radius is 6497.230 feet, distant 321.295 feet; thence on a curve to the left whose center bears North 57° 00′ East and whose radius is 605.027 feet, distant 130.940 feet to a point which bears South 44° 36′ West 20.0 feet from the Southwest corner of that certain parcel of land conveyed by C.O. Sollom, administrator, to Arne Ely Ingels, by deed recorded February 21, 1947 in Book 542 of Official Records at page 389, Marin County Records; thence running along a 45.0 foot roadway and utility easement lying 20.0 feet on the Northeasterly side and 25.0 feet on the Southwesterly side of a line 20.0 feet Southwesterly from and parallel to, the Southwesterly line of said Ingels property, South 45° 24′ East 1525.0 feet to a point South 44° 36′ West 20.0 feet from the Southeast corner of said Ingels property; thence continuing along the center line of a 50.0 foot easement, South 61° 49′ East 880.598 feet; thence on a curve to the right

whose center bears South 28° 11′ West and whose radius is 1150.0 feet, distant 117.083 feet; thence South 55° 59′ East 334.118 feet to the intersection with the center line of a 40.0 foot road right of way, said point of intersection known as station B; thence continuing along the center line of said 50.0 foot easement, South 55° 59′ East 540.508 feet; thence on a curve to the right whose center bears South 34° 01′ West and whose radius is 600.0 feet, distant 110.828 feet; thence South 45° 24′ East 250.0 feet.

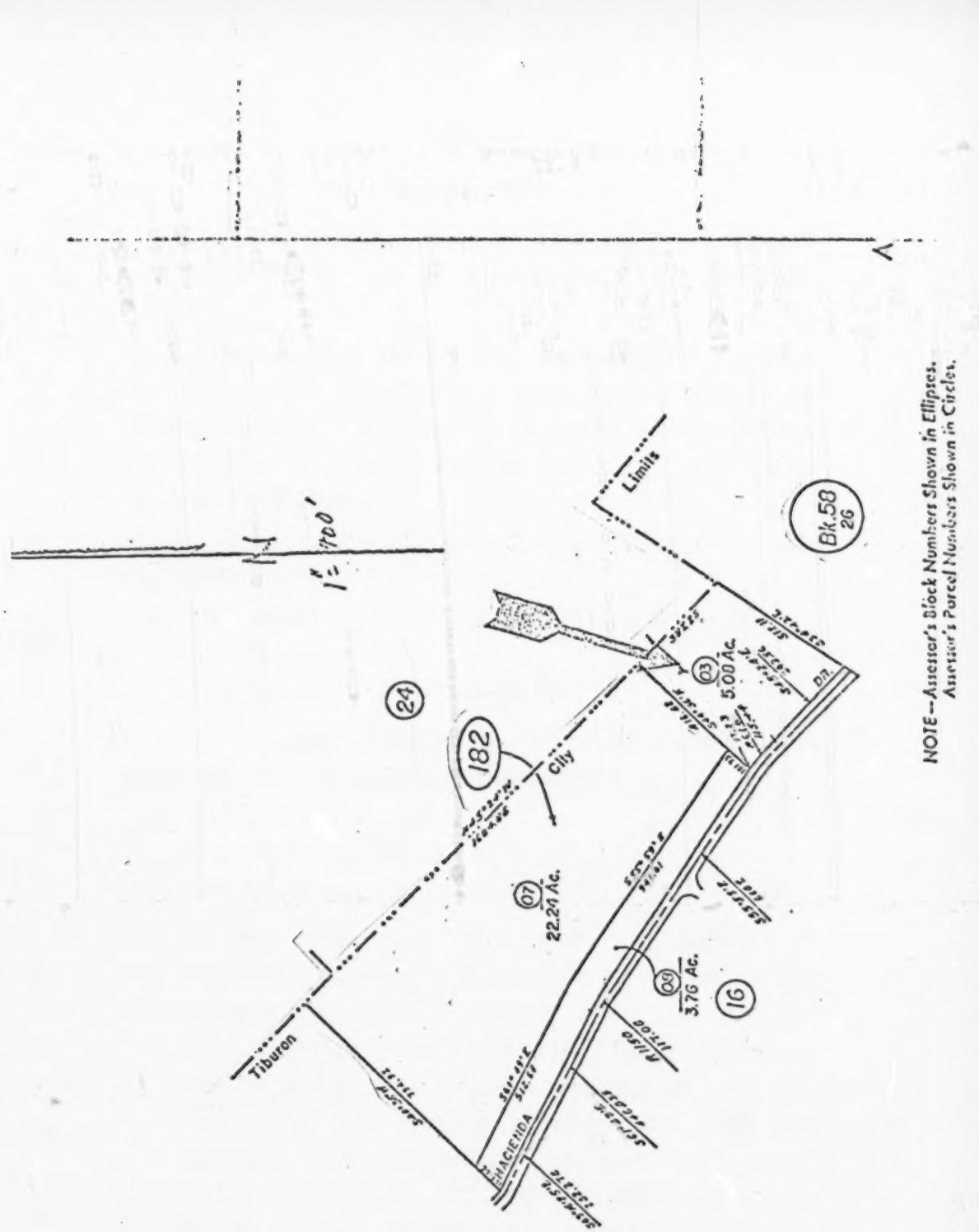

Exhibit "B".

In the Matter of the Claim of DONALD W. AGINS and BONNIE G. AGINS, against the CITY OF TIBURON.

The undersigned claimants hereby make claim against the CITY OF TIBURON, located in the county of Marin, state of California in the sum of two-million (2,000,000.00) dollars and in support of said claim represent as follows:

(a) The names and post office addresses of the claimants are:

DONALD W. AGINS and BONNIE G. AGINS
221 Oakcrest Road
San Anselmo, California 94960

(b) The post office address to which the claimants presenting this claim desire notice to be sent is:

REGINALD G. HEARN
100 California Street
San Francisco, California 94111

(c) The date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted herein are as follows:

The ordinance of the CITY OF TIBURON passed and adopted at a regular meeting of the city council of said city on or about the 28th day of June, 1973, and alleged on belief to be ordinance number 123-NS, and all related legislative action by said council whereby either directly or indirectly the real property described herein and at all times pertinent hereto owned, possessed and controlled by claimants, was classified as "Open Space Territory" and thereby burdened, slan-

dered, rendered unmarketable, caused to be incapable of utilization by the owners thereof and totally deprived of its inherent economic function to claimants as an investment or otherwise.

(d) A general description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the time of presentation of this claim is as follows:

The legislative inactment as aforesaid, related legislative inactments and activities occasioned and effected by said city and all statements, either verbal or written made and caused to be published on behalf of said city wherein the words "Open Space Land" have been uttered or written in relation to the property owned by claimants herein or adjoining, adjacent or neighboring property have completely destroyed the purpose for which the property was purchased by claimants, prevented any sale thereof and deprived and taken without due process of law and just compensation, for the benefit of the CITY OF TIBURON and the public generally all of the property as aforesaid.

(e) The name or names of the public employee or employees causing the injury, damage or loss are the members of the city council of the CITY OF TIBURON and in addition thereto all other employees of said city who in any way and while acting within the scope of their employment performed any duties relating to the "Open Space Program", the acquisition of land by the aforesaid city, the zoning or rezoning thereof, the planning function as it relates to land within the confines of the CITY OF TIBURON or otherwise.

(f) The amount claimed as of the date of presentation of this claim including the estimated amount of any prospective injury, damage or loss, insofar as it may be known at the time of the presentation of this claim is two million (2,000,000.00) dollars.

The basis for computation of the amount claimed is the calculated fair market value of the date hereof of the real property described herein.

(g) The real property to which reference is made herein is described in exhibit (A) attached hereto, incorporated herein, and by this reference made a part hereof. The deed to said property is recorded in book 2250 at page 302 of the official records of Marin County, California which recording data is also incorporated herein.

DATED: September 20, 1973.

DONALD W. AGINS
BONNIE G. AGINS

Exhibit "C".

(LETTERHEAD)
November 15, 1973

Donald W. and Bonnie G. Agins
c/o Reginald Hearn, Esq.
100 California Street
San Francisco, California 94111

Re: Agins v. City of Tiburon

Dear Mr. and Mrs. Agins:

Notice is hereby given that the claim which you presented to the City of Tiburon on October 16, 1973, was refused on November 12, 1973.

WARNING

Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail, to file a court action on this claim. See Government Code Section 945.6.

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

Very truly yours,
/s/ Richard H. Breiner
RICHARD H. BREINER
Deputy City Attorney

RHB:mq
cc: Mr. R. L. Kleinert, City Manager

Demurrer to Complaint.

Superior Court of the State of California for the County of Marin.

Donald W. Agins and Bonnie G. Agins, Plaintiffs, vs. City of Tiburon, a municipal corporation, and Does One through Fifty, Defendants. No. 75873.

Filed: Oct. 31, 1975.

Defendant, CITY OF TIBURON, a municipal corporation, demurs to the complaint, and each cause of action thereof, on each and all of the following grounds:

I.

The allegations in the purported first cause of action of the complaint do not state facts sufficient to constitute a cause of action. (C.C.P. Section 430.10(f)).

II.

The allegations in the purported second cause of action of the complaint do not state facts sufficient to constitute a cause of action. (C.C.P. Section 430.10 (f)).

III.

The Court has no jurisdiction of the subject of the causes of action alleged in the complaint.

IV.

The complaint is uncertain.

WHEREFORE, defendant, CITY OF TIBURON, prays that this demurrer be sustained without leave to amend, that plaintiffs take nothing by their action, and that defendant City have judgment for costs of suit and other proper relief.

DATED: October 28, 1975.

ROBERT I. CONN, City Attorney
RICHARD H. BREINER,
Deputy City Attorney
By /s/ Robert I. Conn
ROBERT I. CONN
Attorneys for City of Tiburon

Order Sustaining Demurrer.

Superior Court of the State of California, for the County of Marin.

Donald W. Agins and Bonnie G. Agins, Plaintiffs, vs. City of Tiburon, a municipal corporation, and Does One through Fifty, Defendants. No. 75873.

Filed: Apr. 23, 1976.

The demurrer of Defendant, CITY OF TIBURON, to the complaint in the above-entitled action came on regularly to be heard on March 29, 1976. RICHARD H. BREINER, Esq., appeared as counsel for said defendant and REGINALD G. HEARN, Esq., appeared as counsel for plaintiffs. The matter was argued and submitted to the Court for decision. The Court having given due consideration to said matters, and good cause appearing therefor:

IT IS ORDERED that the demurrer to the first cause of action of plaintiffs' complaint (inverse condemnation) be and is sustained without leave to amend on the ground that the allegations therein contained do not state facts sufficient to constitute a cause of action.

IT IS FURTHER ORDERED that the demurrer to the second cause of action of plaintiffs' complaint (declaratory relief) be and is hereby sustained on the ground that the allegations therein contained do not state facts sufficient to constitute a cause of action and plaintiffs are hereby granted ten (10) days, after notice, in which to amend.

DATED: April 23, 1976.

/s/ Jack L. Blaine
JACK L. BLAINE
JUDGE OF THE SUPERIOR COURT
PRO TEM

Notice of Appeal.

Superior Court of California, County of Marin.

Donald W. Agins and Bonnie G. Agins, Plaintiffs, v. City of Tiburon, a municipal corporation, and Does One through Fifty, Defendants. No. 75873.

Filed: June 2, 1976.

Plaintiffs hereby appeal from that certain Judgment of Dismissal rendered on May 5th, 1976 and entered on May 6th, 1976.

DATED: June 1st, 1976.

/s/ Reginald G. Hearn
Attorney for Plaintiffs
and Appellants.

C. Other Relevant Parts of the Record to Which the Parties Wish to Direct the Court's Particular Attention.

1. City of Tiburon Ordinance NO. 123 N.S. adopted June 28, 1973. (Printed in Appendix D to the Jurisdictional Statement.)

2. City of Tiburon Ordinance NO. 124 N.S. adopted June 28, 1973. (Printed in Appendix E to the Jurisdictional Statement.)

3. Sections 6950, 6951, 6952, 6953, 6954, 65560, 65561, 65562, 65563, 65566, 65567, 65910, 65911, 65912 of the Government Code of California (Printed in Appendix F. to the Jurisdictional Statement).